

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

NO. 3:95CR38-B-A

GARRICK M. WORD

ORDER DENYING MOTION FOR GRAND JURY TRANSCRIPT

Before the court is the motion of the defendant, Garrick M. Word, requesting that the court order the United States Attorney to provide him with a copy of the grand jury transcript in the above-styled case. As grounds for the motion, defendant states that he is without funds to hire an investigator to obtain statements as to the knowledge of witnesses before the grand jury.

Except for the defendant's own statement, discovery of grand jury proceedings is expressly prohibited by Fed. R. Crim. P. 16(a)(3) (1994), except as provided in Rules 6, 12(i) and 26.2. The defendant also receives the protection afforded by a post-trial remedy if the government fails to provide him exculpatory material. Brady v. Maryland, 373 U.S. 83 (1963). Rule 12(i) is inapplicable here since this motion does not seek to suppress evidence, and Rule 26.2 provides for the disclosure of grand jury witness statements only *after* the witness has testified at trial. Fed. R. Crim. P. 26.2(f)(3) (1994); see 18 U.S.C. § 3500 (1985). Therefore, in this instance it is Fed. R. Crim. P. 6 that the court must look to in determining whether the defendant is entitled to this information under an exception to the general rule of secrecy.

Rule 6 allows disclosure of grand jury materials only in limited circumstances.¹ The Fifth

¹The relevant portion of Rule 6 states that "[d]isclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made -- (i) when so directed by a court preliminarily to or in connection with a judicial proceeding [or] (ii) when permitted by a court at

Circuit has held that in order for a defendant to obtain grand jury materials he must demonstrate with particularity a compelling necessity for this production. In re Grand Jury Testimony, 832 F.2d 60, 62 (5th Cir. 1987). The Supreme Court has developed a three-part test to determine whether particularized need has been shown: “(1) that the material they seek is needed to avoid a possible injustice in another judicial proceeding, (2) that the need for disclosure is greater than the need for continued secrecy, and (3) that their request is structured to cover only material so needed.” Id. (Citing Douglas Oil v. Petrol Stops Northwest, 441 U.S. 211, 222 (1979)). The burden is on the party seeking disclosure to make a "much more particularized, more discrete showing of need" United States v. Proctor & Gamble, 356 U.S. 677, 683 (1958); Douglas Oil, 441 U.S. at 223. Defendant contends only that he is without the means to “ascertain the knowledge of individuals providing testimony and evidence” against him. The court finds that given the availability of relevant information to defendant by other means, there is no particularized need for disclosure of the grand jury transcript which would justify discarding the veil of secrecy traditionally afforded grand jury proceedings.

It is, therefore,

ORDERED:

That the defendant’s motion for a grand jury transcript is denied.

the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury” Fed. R. Crim. P. 6(e)(3)(C) (1994). Whenever information is sought pursuant to either of these sections, “[w]e have consistently construed the Rule, however, to require a strong showing of particularized need for grand jury materials before any disclosure will be permitted.” United States v. Sells Engineering, 463 U.S. 418 (1983).

So ordered, this the 25th day of April, 1995.

UNITED STATES MAGISTRATE JUDGE